

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF NEW YORK

JEREMIAH NOLAN, JR. and
SANDRA NOLAN, Individually
And as husband & wife,

Plaintiffs,

Case No.: 1:19-cv-01245-CCR

v.

TIMOTHY B. HOWARD,

Defendant.

PLAINTIFFS' SUPPLEMENTAL MEMORANDUM

Steven M. Cohen, Esq.
Ariel A. Bauerle, Esq.
HoganWillig, PLLC
Attorneys for Plaintiffs
2410 North Forest Road, Suite 301
Amherst, New York 14068
(716) 636-7600
scohen@hoganwillig.com

PRELIMINARY STATEMENT

Plaintiffs, Jeremiah Nolan, Jr. and Sandra Nolan, respectfully submit this Memorandum of Law in response to the Court's Order to Show Cause as to why the instant action should not be remanded to State Supreme Court.

FACTUAL BACKGROUND

Plaintiffs commenced this action with the filing of a Summons and Complaint in Erie County Supreme Court on September 5, 2019 (Dkt. No. 1, pp. 6-22). Defendants subsequently removed this case to this Court based on federal question (Dkt. No. 1, pp. 1-2). On or about September 20, 2019, defendants moved to dismiss the Complaint in its entirety (Dkt. No. 4). Defendants' motion to dismiss was granted in part and denied in part, and plaintiffs were granted leave to amend (Dkt. No. 8). On or about May 14, 2020, plaintiffs filed a Proposed Amended Complaint (Dkt. No. 9). On or about May 21, 2020, defendants filed a second motion to dismiss plaintiffs' Proposed Amended Complaint (Dkt. No. 10). The Court granted defendants' motion to dismiss in part and ordered plaintiffs to file a more definite statement (Dkt. No. 13). On or about January 20, 2021, plaintiffs filed a more definite statement of claim pursuant to Federal Rule of Civil Procedure 12(e) (Dkt. No. 14). The Second Amended Complaint asserts a cause of action for defamation against Defendant Sheriff Howard in his official capacity (Dkt. No. 14). On or about June 1, 2021, Defendant filed an Answer (Dkt. No. 15). On or about February 17, 2020, Defendant filed the instant motion for summary judgment (Dkt. No. 30). Plaintiff opposed the Defendant's motion on April 22, 2022 and Defendant's filed a reply on or about April 26, 2022.

ARGUMENT

This Court has the discretion under its inherent authority to remand a case to State Supreme Court when jurisdictional sufficient claims have been eliminated and only supplemental jurisdiction claims remain. *See Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343. 351. 108 Sup. Ct. 614, 98 L.Ed.2d 720 (1988); 14C Charles A. Wright, Arthur R. Miller, Edward H. Cooper, Joan E. Steinman and Mary Kay Kane, *Federal Practice and Procedure* § 3722, at 115 (Jurised. Rev. 4th ed. 2018).

The original federal jurisdiction and the reason for removal of this action from State Supreme Court arises from causes of action that have been dismissed. This Court may exercise supplemental jurisdiction over Plaintiff's state law claims, but is not required to do so. It is respectfully submitted that this action should be remanded to State Supreme Court for the remaining causes of action as all federal claims have been dismissed.

CONCLUSION

Wherefore, Plaintiffs respectfully request that this Court remand the instant action to State Supreme Court.

DATED: August 4, 2022

/s/Steven M. Cohen, Esq. _____
Steven M. Cohen, Esq.
HoganWillig, PLLC
Attorneys for Plaintiffs
2410 North Forest Road, Suite 301
Amherst, New York 14068
(716) 636-7600